IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 3404 of 2007(E)

PETITIONER:

THOMAS P.MATHEW, S/.LATE THOMAS,
AGED 50 YEARS, PURAVAKKATTU HOUSE,
KOOTHATTUKULAM P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENTS:

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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY, CO-OPERATIVE DEPTT.,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE POLAKKUZHA SERVICE CO-OPERATIVE BANK
   POLAKKUZHA, MOOVATTUPUZHA.

3. SPECIAL SALE OFFICER,
   POLAKKUZHA SERVICE CO-OPERATIVE BANK GROUP,
   MOOVATTUPUZHA.

BY GOVENMENT PLEADER SMT.LATHA THANKAPPAN
ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE HONOURABLE MINISTER.

EXT.P2: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE JOINT REGISTRAR DATED 10.3.2006.

EXT.P3: COPY OF THE RECOVERY NOTICES ISSUED AGAINST THE PETITIONER.

EXT.P4: COPY OF THE RECOVERY NOTICES ISSUED AGAINST ELSY THOMAS AND PETITIONER.

EXT.P5: COPY OF THE RECOVERY NOTICES ISSUED AGAINST JOSPEH THOMAS AND PETITIONER.

EXT.P6: COPY OF THE RECOVERY NOTICES ISSUED AGAINST MARY THOMAS AND PETITIONER.

EXT.P7: COPY OF THE RECOVERY NOTICES ISSUED AGAINST MERCY MATHEW AND PETITIONER.

EXT.P8: COPY OF THE SALE NOTICE ISSUED BY THE 3RD RESPONDENT DATED 30/12/2006.

TRUE COPY

P.A.TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.3404 OF 2007

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Dated this the 16th day of March,2007

JUDGMENT

The petitioner is a guarantor in respect of four loans taken by his mother,sisters and brother. Repayment of the loan amounts fell in arrears as a result of which the respondents 2 and 3 initiated steps for coercive recovery of the amounts. The petitioner now submits that the loans were taken for agricultural purposes and the petitioner and his principal debtors could not pay off the amounts due because of failure of crops. He would submit that since these are agricultural loans he would be entitled to benefit of the Kerala Debt Relief Commission Act, 2006 and therefore, the respondents are liable to be directed not to proceed with the recovery proceedings until appropriate orders are passed by the authority under the said Act in the application which the petitioner proposes to file. The learned counsel for the respondents 2 and 3 disputes the contention of the petitioner that the loan granted to the principal debtors of which petitioner is the guarantor are agricultural loans.

2. Having heard both sides, I do not think that it is for me to decide these disputed questions of fact. It is for the parties to raise these contentions before the authority under the above said Act. However, I feel that till the petitioner can move the

appropriate authority under the Act, some time should be granted to the petitioner. However, this cannot be without any conditions.

3. At the time of admission this court granted a stay on condition that the petitioner pays an amount of Rs.75,000/- within one month. In I.A.3579/2007 filed by the petitioner he has stated that he has already paid Rs.50,000/- and he seeks further time to pay the balance amount as per that order.

4. In the above circumstances the writ petition is disposed of in the following terms:

The petitioner shall pay the balance amount out of the Rs.75,000/- directed to be paid as per order dated 31.01.07 on or before 31.03.2007. The petitioner shall also pay a further amount of Rs.30,000/- within another month from 31.03.2007. If the petitioner pays these amounts in time as directed above, further coercive proceedings for recovery of the amounts, shall be kept in abeyance for one month after the appropriate authority is constituted under the above said Act. However, if the petitioner does not pay the amounts as directed above the respondents 2 and 3 would be free to proceed further with the recovery proceedings as initiated now.

S.SIRI JAGAN,JUEDGE

dvs